

## **Chapter 2      DESCRIPTION OF THE ALTERNATIVES**

This environmental assessment addresses two alternatives: the No Action alternative and the Proposed Action of title transfer as described in the Fremont-Madison Conveyance Act. Regulations require the action agency to consider a No Action alternative for comparative analysis purposes.

### **2.1      Alternative A – No Action**

Under the No Action alternative, the United States would retain title to all facilities, and FMID would exercise its option to renew its current Teton Exchange Wells water service contract written pursuant to Section 9(e) of the 1939 Act or convert to a repayment contract under Section 9(d) of the 1939 Act. Under a water service contract, FMID and Reclamation would agree to a fixed yearly assessment for use of the Teton Exchange Wells. This assessment would continue until the costs of the wells were paid off. By statute, the contract length can be up to 40 years; the contract would need to be renewed periodically. Under a repayment contract, FMID and Reclamation would agree to a yearly repayment amount. A repayment contract would not need to be renewed; as long as both parties agreed, repayment contracts would extend into perpetuity, even if the construction obligation was satisfied. The environmental effects of these two contracting methods are identical.

FMID would continue to operate and maintain the five existing exchange wells in the future in much the same way that it has in the past. Currently, FMID operates the exchange wells in low water years if rental pool water is not otherwise available. This alternative assumes that in the future, rental pool water would be available to FMID irrigators under approximately the same conditions that existed between 1977 and 2002. Operations of Island Park Reservoir would not change.

Reclamation would take the necessary actions under Idaho State law to prove beneficial use for the five developed wells. By doing so, Reclamation would relinquish to the Idaho Water Resource Board the undeveloped portion of the permit. Reclamation has requested extensions for this water right permit in the past and would likely request an additional extension to complete the proving process before the permit expires.

FMID would be fully responsible for the administrative costs of renewing or converting the contract and complying with NEPA and ESA requirements. FMID's

## 2.2 Alternative B – Title Transfer

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operation of the facilities, its relationship with Reclamation, and Reclamation's oversight of FMID would continue unchanged. FMID would remain eligible to request assistance through Federal programs.

## **2.2 Alternative B – Title Transfer**

The Proposed Action would implement the provisions of the Fremont-Madison Conveyance Act (see Appendix A). This Act directs the Secretary to convey to FMID “all right, title, and interest of the United States in and to the canals, laterals, drains, and other components of the water distribution and drainage system.” This includes lands and facilities associated with the Cross Cut Diversion Dam, Cross Cut Canal, and the Teton Exchange Wells, pursuant to the Memorandum of Agreement between Reclamation and FMID, as amended (see Appendix B). The major provisions of the Conveyance Act are described below. Only those provisions of the Conveyance Act that require a Federal action are included in this NEPA analysis.

### **2.2.1 Facilities and Lands**

Included in the transfer are all rights, title, and interest of the United States in and to the canals, laterals, drains, and other components of the water distribution and drainage system that is operated or maintained by FMID for delivery of water to and drainage of water from lands within FMID boundaries (as modified by the Conveyance Act). Specific facilities are the Cross Cut Diversion Dam, Cross Cut Canal, and appurtenant acquired land and easements. Purposely omitted from legislation was the transfer of Island Park and Grassy Lake Dams.

Reclamation previously acquired approximately 20 acres in fee title and 63 acres of easement for the Cross Cut Canal. The land and easements are located under and along the canal in widths ranging from 100 to 150 feet, with varying widths on each side of the centerline.

### **2.2.2 Teton Exchange Wells**

Also included in the transfer are the five existing Teton Exchange Wells and appurtenant equipment, acquired land, easements, rights-of-way, and State of Idaho water right permit #22-7022. Reclamation acquired approximately 3 acres in fee and 4 acres in easements for the wells. Two of the wells use BLM rights-of-way.

Under Idaho State water law, the permit-holder must complete construction of the project and submit to the Idaho Department of Water Resources (IDWR) “proof of beneficial use.” Following a field examination to confirm beneficial use, IDWR may

issue a license that the water appropriation has been complete. If a license is issued on water right permit #22-7022, the subsequent water right would have the priority date of April 23, 1969. Though only five exchange wells have been developed, the original permit anticipated up to 45 wells.

FMID has indicated that if title is transferred and if permitted by Idaho State water law, it may develop an additional five to eight wells, which, along with the existing five wells, would provide the District with up to 80,000 acre-feet of water during the irrigation season in low water years. In a March 15, 2002, Memorandum of Agreement between FMID, the Twin Falls Canal Company, and the North Side Canal Company, Ltd., FMID agreed to limit the wells' expansion to provide a maximum of 80,000 acre-feet per year during low water years. Appendix C contains a copy of this agreement. This agreement also stipulates that prior to developing additional wells, FMID shall develop an IDWR-approved plan that mitigates any injury to other irrigation water users that is caused by the operation of the additional wells.

This water volume would satisfy FMID's water requirements in the lowest water year in the 25-year period of record. Because the electrical costs for pumping could be significant, FMID would likely continue to use pumped water from the exchange wells as a last resort for supplemental water. The remaining undeveloped but permitted wells may be assigned to the Idaho Water Resource Board. These activities are discussed in detail in Chapter 3.

The proposed points of diversion for the permit are located within the boundaries of the Eastern Snake River Plain Aquifer, which currently has a court-ordered prohibition on new permits. Idaho statutes and IDWR rules would govern the future development of additional wells. This development process would follow the regulation and laws governing Idaho groundwater development, an assessment of impacts, and the development (if necessary) of mitigation plans.

Upon Reclamation signing a quit claim deed, FMID would remit a payment of \$250,961 to fully discharge its repayment obligation for the Teton Exchange Wells and associated facilities.

### **2.2.3 Limitations and Liability**

As stated in the Conveyance Act, effective on the date of conveyance of the facilities, the United States shall not be liable for damages of any kind arising out of any act, omission, or occurrence relating to the conveyed facilities, except for damages caused by acts of negligence committed by the United States or by its employees, agents, or contractors prior to the date of conveyance.

### **2.2.4 Water Supply to District Lands**

The Conveyance Act increases the acreage within the District eligible to receive water from the Minidoka Project and the Teton Basin Project to reflect the over 285,000 acres of land that currently receive project water within the District. These include lands that the District annexed in anticipation of the completion of the Teton Basin Project and that currently receive project water. This Act does not provide for any additional Reclamation project water beyond that which is currently authorized under existing storage contracts, the State of Idaho water right permit #22-7022, or as allowed by State water law. Therefore, no acres within the FMID boundaries will receive additional water. As described in Section 2.2.2, the transfer of title would provide FMID an opportunity to develop additional wells within the existing threshold of the water right permit. The current storage contracts between Reclamation and FMID would remain unchanged.

Passage of the Fremont-Madison Conveyance Act legislatively increased the District acreage eligible to receive Project water. In the Conveyance Act, Congress ratified an existing condition (project water being used on lands outside the Federally recognized boundaries). However, Chapter 3 does discuss the potential effects of reasonable and foreseeable increases in consumptive water use on FMID lands.

### **2.2.5 Drought Management Plan**

The Conveyance Act requires the Secretary to collaborate with Henrys Fork watershed stakeholder organizations to initiate a drought management planning process and to report to Congress on a proposed Drought Management Plan. This plan would include the outcome of discussions between FMID and participants in the Henry's Fork Watershed Council, which includes several local, State, and Federal agencies, private citizens, and non-governmental organizations. The current framework recognizes the various social, economic, and ecological uses and benefits of available water. All stakeholders in the watershed interested in protecting their interests have been encouraged to participate in this planning process. Section 4.1 describes Reclamation's involvement in the current planning process.

The drought management planning process is focusing on affected resources that are important economically, sociologically, and ecologically. Van Kirk (2004) said, in soon to be published research, that water storage, water law, and irrigation deliveries have altered river and stream hydrology in the Henrys Fork subbasin, and this alteration is highest during low water years and greatest in the upper portion of the basin.

Some ecological principles at the center of the planning process include the importance of flow shape over flow amount, the variety of hydrologic needs for

individual river reaches, and the importance of hydrologic extremes, such as peak flows to maintain channel and riparian processes (Van Kirk 2004). Economic issues concerning the water supply relate to irrigation, recreation, and associated businesses that require dependable water supplies. Socially, the Henrys Fork has world-renowned rainbow trout and is of national importance. The goal of the plan is to reduce hydrologic alteration, provide a more reliable water supply for FMID, increase Island Park hydroelectric output, provide these benefits during the driest third of years, and maintain current (near natural) peak flows in the lower Fall River and Henrys Fork.

FMID currently has an agreement in draft form committing it to working cooperatively with other interested groups in addressing stakeholder concerns during low water years.

This ambitious management plan is a collaborative effort and has thus far been developed by consensus among the watershed's stakeholders. This is not an agency action and is not subject to NEPA. If future actions require Reclamation involvement, additional NEPA compliance may be required.

